

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4543 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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P N JAIN

Versus

STATE OF GUJARAT  
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Appearance:

MR YN OZA for Petitioners  
Mr K G Sheth, AGP for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/07/2000

ORAL JUDGEMENT

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The present petition has been filed under Articles 14,16 and 226 of the Constitution of India challenging Rule 4 of the Examination Rules of the second respondent. The petitioners abovenamed have approached

this Court with a case that the petitioners appeared for the examination for recruitment to the Gujarat Service of Engineers Class I and II conducted by Gujarat Public Service Commission, 1980 held by the respondent in the month of December, 1980. The second respondent also conducted oral test of the successful candidates at the written test. That after the oral test, results were declared and the names of the petitioners were not included in the list of successful candidates. That on an enquiry made by the petitioners at the office of the second respondent, it was learnt that the second respondent had prescribed minimum qualifying standard in the oral tests at 100 marks out of 200 marks and as the petitioners were not able to obtain the same, they were not declared successful. The petitioners claim that the respondent had conducted a similar examination on previous occasion wherein no such standard was prescribed and therefore, the candidates were declared as successful at the aggregate score of the candidates. That when the second respondent had prescribed the aforesaid minimum qualifying standard in the oral tests for the first time it was not known to the petitioners or to other candidates who appeared in the examinations. The relevant rule has been referred in para 4 of the petition which is reproduced as follows:

"The Commission will fix what should be the qualifying marks in any or all the subjects of the examination and in the total either generally for all candidates or separately for candidates from the Scheduled castes/Scheduled Tribes/Socially and Economically Backward Class including Nomadic and Denotified Tribes in respect of vacancies reserved for such candidates and for other candidates and a candidate shall not be deemed to have qualified in the examination if he fails to obtain the qualifying marks fixed by the Commission in the viva-voce and personality test."

The petitioner also says that the said supplement also prescribed the standard for examination and clause (c) of the said topic reads as under:

"(c) The object of the Viva-voce and personality test will be to assess the suitability of the candidate for appointment to the Gujarat Service of Engineers, Class I or Class II, as the case may be, and his calibre, including intellectual, social and moral traits of personality such as critical powers of assimilation clear and logical

exposition judgment variety and depth of interest and capacity for leadership. While no attempt will be made to test his general or specialized knowledge, the test will seek to elucidate how far the candidate has taken an intelligent interest in the things happening within and outside India."

The petitioners claim that the aforesaid action of the second respondent is malafide and violative of the fundamental rights of the petitioners and thus requires to be quashed and set aside in the interest of justice. That the petitioners are subjected to pick and choose action by employing different criteria in the same examinations held by respondent No.2 last year and this year. That the petitioners have come to know that the second respondent prescribed minimum qualifying standard in written tests as 405 marks out of 900 marks which comes to 45% only while the minimum qualifying standard fixed in oral tests is at 100 marks out of 200 marks which amounts to 50% of the total marks for oral test. That the aforesaid policy on the part of the second respondent is illegal and unconstitutional. The petitioners claim that the first petitioner has scored highest marks i.e. 503 at the written examination and 85 marks in oral test. That therefore, there is a total of 588 marks in aggregate out of 1100 marks. That the petitioner No.1 stands at sr.no.3 and petitioner No.2 stands at sr.no.4. The second petitioner has scored aggregate marks of 576 out of 1100. That the petitioners were declared successful in the previous examinations held by the second respondent wherein the second respondent never prescribed any minimum qualifying marks for the oral test separately and their performance was judged by the aggregate marks scored by them in the oral as well as written test. The petitioners, therefore, claim that the aforesaid new policy for fixing minimum standard for oral test is illegal and unconstitutional and requires to be quashed and set aside. The petitioners have referred to certain decisions of the earlier petitions claiming them to be similar in nature. The petitioners have preferred this petition for appropriate writ, order or direction to declare rule (4) of the Examination Rules to be held as ultravires, illegal and inoperative in law as it is violative of Articles 14 and 16 of the Constitution of India. The petitioners have also prayed to declare the appointments made being ineffective and inoperative in law. The petitioners also prayed for appropriate writ, order or direction directing the second respondent to employ the same criteria that of aggregate marks and thus declaring

the petitioners to be successful in the competitive examinations for recruitment to Gujarat Service of Engineers Class I and Class II held in December, 1980.

2. At the admission stage, notice was issued. The petition was admitted in the year 1985. Though the notice of rule was duly served, the second respondent has not appeared. However, the first respondent is represented by Mr K G Sheth, learned AGP.

3. I have heard learned Advocate for the petitioners and Mr K G Sheth, learned AGP for the State. As said above, none appears for the second respondent. The petitioners have contended that they appeared in the written and oral test for Gujarat Services of Engineers Class I and II held by second respondent in December, 1980. They have also claimed that they were successful at the written test but they have failed to get 50% of the total marks for oral test and hence they were declared unsuccessful. It is not much in dispute that the total marks are 900 in written and 200 in oral test. It is also not in dispute that for getting through written test, the petitioners were required to score 405 marks out of 900 at written tests. The petitioners were required to get 100 marks out of 200. These facts are not in dispute at all. The petitioners mainly contended that the marks cannot be allotted for viva-voce more than 15% of aggregate. It is the contention of the petitioners that the marks allotted for viva-voce exceeded the said limits and therefore, the said rule requires to be struck down.

4. It is very clear from the rule referred to in the petition that the rule itself does not prescribe any standard but discretion has been given to the second respondent to fix a criteria in this field. Accordingly the criteria has been fixed by the second respondent as above. This would mean that the second respondent has taken a decision to allot 405 marks out of 900 marks for written test and 100 marks out of 200 marks for oral test as passing standard. Even minimum qualifying standard has been fixed by the second respondent as aforesaid. The question is as to whether this can be upheld.

5. On this aspect of the case, learned Advocate for the petitioner has relied upon a decision of this Court in Special Civil Application No.3820/81 which has been disposed of by this Court on 5.11.1984 by the Division Bench of this Court. The aforesaid petition has been tagged along with the papers of this petition. Therefore, I have looked into the judgment and order of

the aforesaid petition. This was read with the assistance of the learned Advocate for the petitioner as well as Mr K G Sheth, learned AGP.

6. The said matter also related to the examination conducted by the second respondent for the selection for candidates for appointment to the post of Executive Engineers of Gujarat Service of Engineers Class I and Class II. The said examinations were conducted for the said recruitment in accordance with the Executive Engineers (Civil) Gujarat Service of Engineers, Class-I, Recruitment Rules, 1979 which have been made by the Governor of Gujarat in exercise of powers conferred on him by Article 309 of the Constitution of India. Rule 4 of the said Rules has been referred to hereinabove. This Court has considered the aforesaid rules and after a detailed discussion on the applicability of the said rules and after considering certain decisions like the one in the case of Shantilal Ambalal Panchal v. State of Gujarat, reported in 1984 GLH 217, this Court allowed the aforesaid petition and directed the Commission to consider the question of inclusion of the petitioners' names in the merit lists on the basis of aggregate of marks in the written as well as viva voce tests ignoring the concept of minimum qualifying marks for viva voce test. The Court further directed that if the petitioners are entitled to the inclusion of their names on merits on the basis of aggregate marks, the merit lists shall accordingly be revised and appropriate recommendations shall be made to the State Government. Further it was directed that if the petitioners are entitled to appointments to the posts in question on the basis of inclusion of their names in the merit lists, such appointments shall be given to them by the State Government. The Court further directed that in such an event, they shall also be given appropriate seniority in accordance with their ranking in the merit lists, in other words, the petitioners shall be placed above those who rank below them in the merit lists in the seniority list of the posts in question. Rule was made absolute as aforesaid. The facts of the case in this petition are similar and the present case is squarely covered by the said decision. It would be relevant to refer to certain observations made in the aforesaid decision of this Court. There it has been observed at page 16 that candidates like P N Jain and Patel proved to be outstanding even amongst such candidates but unfortunately the Commission did not find them suitable at viva voce test as they failed to obtain the qualifying marks of 50% of the total marks. In absence of any rationale in fixing 50 per cent of the total marks as

qualifying marks, the decision of the Commission to fix such qualifying marks as qualifying marks cannot be upheld. The decision of the Commission is on the face of it arbitrary.

7. However, this Court also observed that it is not possible to reject the entire selection on the ground that the Commission committed a serious legal error in prescribing qualifying marks at the viva voce test and drawing up merit lists on this impermissible method. It would be equally improper to disturb selection of those who had been selected and appointed on the basis of such merit lists. The Court also observed that ends of justice would be met if the Commission is directed to revise the merit lists in accordance with the directions given hereafter. This Court had positively observed in the above referred decision that undue importance was given to the oral test. It further observed that if the candidate is unable to obtain qualifying marks at the oral test, then notwithstanding his outstanding performance at the written test he would not be eligible to be included in the merit list. Thus as much importance is given to the viva voce test, it effectively negates the result of the written test. The Court observed that in absence of any basis or rationale in adopting 50 per cent of the total marks as qualifying marks at the viva voce test, it is difficult to hold that the Commission had adopted fair and reasonable standard for making objective assessment for the qualities required of the candidate for being selected for the post in question. Fixing of qualifying marks has no nexus with the examination. The Court has thereafter observed that the action of the Commission in fixing the qualifying marks for viva voce test was arbitrary, unreasonable and unjustified and, therefore, the Commission should have, in the circumstances disclosed on the facts of the case, prepared the merit list on the basis of aggregate marks obtained by each candidate at the written as well as viva voce tests. Therefore, the entire policy of the respondent No.2 for fixing qualifying marks as 50% of the total marks for oral test has been struck down by this court in the above said decision.

8. Considering the facts and circumstances of the case before this Court and the facts of the case as aforesaid in Special Civil Application No.3820/81, I am of the view that the aforesaid decision squarely covers the facts of the present case. Same rule is in dispute in this petition also. Here also, the second respondent has adopted the same method and has fixed a requirement

of 50% of marks at oral test. Even if a candidates obtains 100 per cent or 80 per cent or 75 per cent of marks at the written test but fails to get 50% of marks at oral test, then he will not find his name in the select list. Even this standard of 50% of marks is not applicable to written test. This shows that respondent No.2 was given undue importance and weightage to tal test. This cannot be said to be a reasonable approach.

9. In the premises, I respectfully follow the principle laid down in the aforesaid decision and come to an opinion that the action of respondent no.2 in fixing 50% of total marks for oral test as qualifying standard is unreasonable and arbitrary and hence illegal and unconstitutional.

10. The result is that this policy and method are required to be quashed. Therefore, the resultant outcome will also have to be quashed. As discussed in the earlier matter, it would not be just and proper to strike down the entire selection list. It would be just, proper and even enough if the respondent no.2 is directed to consider aggregate of oral and written tests and if the petitioners are entitled to be included in select list on the basis of the total marks for both written as well as oral test, the merit list should be revised and the petitioner should be placed therein at the proper place on the basis of the aggregate marks. IF the petitioners are entitled to be included in the select list, then after their placement at appropriate places in the list, the second respondent will have to send recommendations to the State Government. The State Government will have to consider the question of their appointment on receipt of such recommendation from the second respondent. If and when the petitioners are appointed as aforesaid, they shall be given due seniority in accordance with their placement in the select list. The result is that the petition deserves to be allowed as aforesaid and relief as above should be granted to the petitioners.

11. In the result, this petition is allowed. The Commission is directed to consider the question of inclusion of the petitioners' names in the merit lists on the basis of aggregate of marks in the written as well as viva voce tests ignoring the concept of minimum qualifying marks for viva voce test. If the petitioners are entitled to the inclusion of their names on merits on the basis of aggregate marks, the merit lists shall accordingly be revised and appropriate recommendations shall be made to the State Government. If the petitioners are entitled to appointments to the posts in

question on the basis of inclusion of their names in the merit lists, such appointments shall be given to them by the State Government. In such an event, they shall also be given appropriate seniority in accordance with their ranking in the merit lists. In other words, the petitioners shall be placed above those who rank below them in the merit lists in the seniority list of the posts in question. If necessary, they may be given deemed date of appointment without any monetary benefit.

Rule is made absolute accordingly with no order as to costs.

[D P Buch, J]

msp.